

NORTH CAROLINA
BOARD OF FUNERAL SERVICE



Minutes
March 8, 2023, Board Meeting

The North Carolina Board of Funeral Service met for a duly scheduled Board meeting on March 8, 2023, at the NC Board of Funeral Service office suite at 1033 Wade Avenue, Suite 108, Raleigh, NC 27605.

Present: Dr. Steven Lyons, President; Thomas Hilderbrand, Vice-President; Darrell McCormick, Secretary; Steve Herndon; Chris Watson; LeShekia Coleman; Robert Jansen; Dr. Kimberly Kelsey; and Richard Hinchey.

Staff and Counsel: Stephen Davis, Executive Director; Amy Acord, Assistant Director; Catherine Lee, General Counsel; and Brett Lisenbee, Compliance Officer.

Dr. Lyons called the meeting to order at 9:00 a.m. and led members and staff in a recitation of the Pledge of Allegiance followed by the invocation which Dr. Kelsey offered. He proceeded by reading the Statement of Ethics and asked if any members would be recusing themselves. Mr. Herndon announced that he would be recused from Board Case Number M23-0006. Dr. Lyons then asked if any guests were present and if they wished to offer any public comment. No guests were in attendance.

Dr. Lyons continued and asked Mr. McCormick to present the minutes from the February 8, 2022, Board meeting.

Approval of Minutes

Mr. McCormick said that the minutes had been sent to each member prior to the meeting for review. He invited any amendments or comments regarding the minutes. Hearing none, Dr. Lyons asked for a motion.

Upon a motion by Mr. Hilderbrand and a second by Dr. Kelsey, the Board voted to adopt the February 8, 2023, minutes as presented.

Dr. Lyons then presented the Finance and Personnel Committee report and asked the Executive Director to offer highlights from the report.

Finance and Personnel Committee Report

Mr. Davis reported that the Statement of Net Position showed a balance of \$605,109.00 for the Preneed Recovery Trust Fund compared to \$477,831.52 for the same reporting period in 2022. Mr. Davis briefly summarized the growth in the Preneed Recovery Trust Fund since 2018 when the balance was \$229,999 and noted that the Compliance Inspections team deserved credit for some of the increase since their onsite inspections of funeral establishments regarding preneed records is detailed and thorough. He said that the short-term spike in preneed contracts during the pandemic was also a key factor in the Fund's growth over the five-year period. Mr. Davis continued and said that another critical measure of the Board's net position was the Unrestricted Fund Balance which he reported as \$1,397,691.33 compared to \$1,187,243 for the same period in 2022. He also noted that the Unrestricted Fund Balance has shown significant growth in the past five years when the balance was \$761,044 in 2018. He reminded the Board that this balance is an

important indicator of the reserve operating capital which is a key measure of net position. Overall, Mr. Davis said that the Board's financial reports indicate a strong, robust net position that demonstrates stability and fiscal soundness.

Mr. Davis then reported on the Statement of Revenue and Expenses which indicates that 76.7% of the project license fee revenue has been received as of January 2023. The Total Revenue received is \$566,790.08 which represents 37.5% of the revenue projected for FY2023. Mr. Davis commented that these balances and percentages track nearly the same as for the period ending January 2022. He concluded his summary by reporting that at the end of the first month in the fiscal year, the Board's expenses are 7.1% of the total projected budget. He noted that the benchmark percentage for this reporting period is 8.3% which means that the Board's budget as of January 2023 is less than the benchmark percentage meaning it is "under budget."

Mr. Davis said that he would be glad to answer questions regarding the budget. Brief discussion ensued. Dr. Lyons then invited a motion for approval of the January financial reports.

Upon a motion by Mr. McCormick and a second by Dr. Kelsey, the Board voted unanimously by roll call to approve the financial reports for the period ending January 2023 as presented.

Mr. Davis then asked to be recognized to continue the highlights from the Finance and Personnel Committee report. He said that he had invited quotes from four (4) local firms to assess the Board's access control and security system including fire safety alarms. He noted that the firm currently under contract to provide these services does not meet the Board's expectations for proper oversight and maintenance of the current systems for access control and fire safety. He said that the current system is approaching twenty (20) years since its installation and that it was necessary to move forward with a new system since the Board's annual fire safety inspection by the Raleigh Office of the Fire Marshal is due on June 21, 2023. He said that he would be reporting the results of each quote received to the Finance and Personnel Committee hopefully in April.

Mr. Davis continued and said that he had awarded permanent status to Ms. Corina Wyche who fills the position responsible for the daily entry of preneed contract information into the Board's licensing management system. He reported that this responsibility is critical in assuring that the Board can prepare and send confirmation letters to consumers purchasing a preneed contract as required by statute. He briefly summarized Ms. Wyche's experience with the Board initially as a temporary employee and reported that she has demonstrated proficiency in carrying out her assigned duties and responsibilities.

Dr. Lyons conveyed thanks to Mr. Davis for his comments on the Finance and Personnel Committee meeting. He then recognized Mr. Herndon for the Disciplinary Committee report.

Disciplinary Committee Report

Mr. Herndon said that the Disciplinary Committee met on March 3, 2023, to consider the following disciplinary cases along with recommendations and rationale for each case number. He reminded members that he would be recused from Case Number M23-0006 and that Mr. Watson would present that particular case.

Summary Dismissal

C23-0009

Dismissals

C23-0002 C23-0004 C23-0008

Letters of Caution

C22-0095

Notices of Hearing

M23-0010 C23-0006

Other

M23-0007 M23-0008 M23-0009

Mr. Herndon invited any questions or comments concerning the cases included in the Disciplinary Committee report. Hearing none, he said that he was offering the Committee report with the exception of M23-0006 in the form of a motion.

Upon Mr. Herndon's motion, Mr. Watson offered a second. The Board voted unanimously by roll call to approve the Disciplinary Committee report as presented with the exception of Board Case Number C23-0006.

Dr. Lyons then recognized Mr. Watson for presenting Board Case Number M23-0006. Mr. Watson said that there were no concurrent cases associated with M23-0006, and he summarized the primary issues associated with the case. He noted that the Disciplinary Committee recommended denying Respondent's application for a resident traineeship in funeral service but providing Respondent with an opportunity to appeal the denial.

Without questions or comments from the Board, Mr. Watson offered a motion for approval of the recommendation concerning Board Case Number M23-0006.

Upon Mr. Watson's motion, Dr. Kelsey offered a second. The Board voted in the majority by roll call to approve the Disciplinary Committee recommendation in the matter of Board Case Number M23-0006. Mr. Herndon was recused from the vote.

Dr. Lyons then announced that he had agreed to change the order of the agenda to allow the staff reports to follow the Disciplinary Committee report. He recognized Mr. Davis for the Executive Director's report.

Executive Director's Report

Mr. Davis presented the following items for the Board's information and discussion:

- He stated that he had provided each Board member a newsletter from the State Ethics Commission regarding the due date for the annual Statement of Economic Interest (SEI) which included links to the Commission's website for electronic filing or access to a paper version of the SEI. Dr. Kelsey said that she had recently completed an SEI in support of her appointment to the Board and asked if she needed to complete another. Mr. Davis responded affirmatively.
- We are upgrading our telephone system which is no longer cost-effective or reliable. The age of the system limits our ability to efficiently handle incoming calls. We have a contractual agreement with a communications company, and they will upgrade our system to a hosted IP-based system which allows for cell phone integration, unified messaging, fee cell phone applications and video chat, and an auto-attendant with multiple extensions. The new configuration will generate monthly savings of \$300 per month.

Proposed Legislation:

I formally submitted the Board's proposed legislation for amending NCGS 90-210 regarding:

- Number of trainees under a single supervisor
- Reciprocal licensure: Removal of language regarding "at the time the license was issued" and "substantial equivalency."

- Fee increases for cremations (from \$10 - \$20) and Preneed Contract registrations (from \$20 to \$25).

The Office of the Chief Medical Examiner is seeking to expand the definition of an eligible county medical examiner as a way to eliminate coverage gaps in NC counties.

Rep. Alexander supports legislation imposing penalties on individuals selling embalming fluid for purposes other than the lawful preservation of a dead human body. Rep. Alexander has invited comment from the Board.

Rep. Alexander has sponsored legislation amending the Funeral Procession Law under the provisions of HB 251 which was filed on March 1, 2023.

The Conference Annual Meeting March 1 and 2

Dr. Lyons, Mr. Hilderbrand, Ms. Acord and I attended the Annual Meeting of The Conference last week and heard in-depth presentations on a number of regulatory issues including examination development; pending legal cases affecting funeral service regulation; and disciplinary matters involving a funeral establishment in Detroit, Michigan. He noted that the 2024 Annual Meeting will be in Myrtle Beach, SC.

Mr. Davis concluded his report by referring to the licensure and inspections reports. He invited any questions or comments concerning these reports.

Mr. Lisenbee noted that the 2016 performance audit by the NC Office of the State Auditor stated that the Board's inspection of licensed funeral establishments should occur on a three-year cycle. He said that this standard had been included in the administrative rules governing business licensure. Mr. Lisenbee said that the Board's Compliance Inspection team has achieved this objective and would likely meet a 2.5 year inspection schedule in coming months. He recognized the diligence and competence of the Compliance Inspection team and noted that this achievement would have been difficult without their constant efforts to maintain and exceed the 3-year schedule that the Board had set earlier. Mr. McCormick asked if the Board could accelerate this schedule in cases where prior inspections or disciplinary actions would warrant more frequent inspections. Mr. Lisenbee said that staff routinely conduct re-inspections when deficiencies have been cited.

Dr. Lyons thanked Mr. Davis for his comments and then asked Ms. Lee for the Legal Case Report.

Legal Case Report

Ms. Lee reported the following information concerning legal cases to the Board:

DISCIPLINARY MATTERS

Current Active Cases: 36

Pending Investigation: 17
Pending Review by Disciplinary Committee: 11
Pending Dispositive Action:
Pending Hearing: 6
Post-Hearing: 0
Other: 2

New files opened since last Board meeting: 15

Notices of Hearing sent since last Board meeting: 1

Consent Orders received since last Board meeting: 0

Cases reviewed by Disciplinary Committee since last Board meeting: 11

PRENEED RECOVERY FUND CLAIMS

Current Active Preneed Recovery Fund Claims: 0

Pending Investigation: 0

Pending Dispositive Action: 0

Preneed Recovery Fund Claims received since last Board meeting: 0

Preneed Recovery Fund Claims re-opened since last Board meeting: 0

Preneed Recovery Fund Claims reviewed by Committee since last Board meeting: 0

Ms. Lee offered to answer questions regarding the legal case report. None were offered and Dr. Lyons then asked for any New Business or Old Business items.

New Business

No New Business items were offered.

Old Business

No Old Business items were offered.

Dr. Lyons announced a brief recess and said that the Board would meet in closed session when it reconvened to hear information from Ms. Lee on legal matters subject to attorney-client confidentiality pursuant to NCGS 143-318.11. Following the recess, the Board reconvened. Mr. McCormick offered a motion that the Board convene in closed session with a second by Ms. Coleman. The Board voted unanimously by roll call to convene in closed session.

Upon proper motion and vote, the Board voted unanimously by roll call to reconvene in open session. Dr. Lyons invited any motions pertaining to the matters discussed in closed session.

Upon a motion by Mr. Herndon and a second by Mr. Watson, the Board voted unanimously by roll call to direct General Counsel to seek injunctive relief in the General Courts against John Peoples for unlicensed practice.

Dr. Lyons then announced that the Board would conduct an administrative hearing in the matter of Wells Family Mortuary, LLC and Vashti Lenique Ayers, Board Case Nos. M22-0038 and M22-0044. He reported that Mr. Hilderbrand would serve as the Presiding Officer and that Ms. Sabra Faires from Bailey & Dixon would serve as Board Counsel.

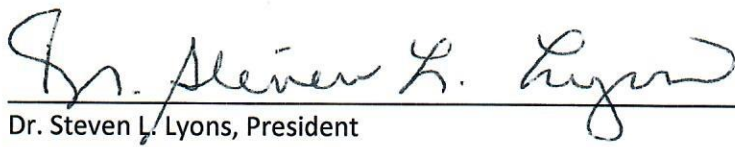
Upon the conclusion of the hearing in Board Case Numbers M22-0038 and M22-0044, Mr. Watson offered a motion for the Board to convene in closed session to deliberate on the matter. Mr. McCormick offered a second to the motion. The Board voted unanimously to convene in closed session.

Following the deliberation, Mr. McCormick offered a motion to reconvene in open session. Ms. Coleman offered a second to the motion. The Board voted unanimously to reconvene in open session. Mr. Hilderbrand invited any motion pertaining to the matter discussed in closed session.

Upon a motion by Mr. Watson and a second by Ms. Coleman, the Board voted by roll call to deny renewal of the 2023 funeral establishment permit for Wells Family Mortuary, Inc. The Board further voted to place the Funeral Service License of Vashti Lenique Ayers on probation for a period of one (1) year. The Board further voted that, before Respondent Ayers may be eligible to renew her Funeral Service License for 2024, she must complete a Board-sponsored continuing education course on the FTC Funeral Rule, in addition to five (5) hours of continuing education needed to renew said license. Dr. Lyons and Mr. Herndon were recused from voting.

At the conclusion of the hearing and the deliberation, Mr. McCormick offered a motion to adjourn the meeting. Mr. Hinchler seconded. The motion carried.

Affirmation:



Dr. Steven L. Lyons, President



Mr. Darrell McCormick, Secretary



Date

